IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

WP(C).No. 12878 of 2007(G)

IA.1805/2007 IN OS.552/2000 of I ADDL.SUB COURT, THRISSUR

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PETITIONER:

SATHYABHAMA,D/O.ALLATH KARTHYAYANI AMMA,
ANTHIKAD DESOM AND VILLAGE,THRISSUR TALUK.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS:

1. CHANDRANGADAN,S/O.ALLATH KARTHYAYANI AMMA,
   RESIDING AT THIRUNILATHIL HOUSE,
   KANIMANGALAM, KANIMANGALAM DESOM & VILLAGE,
   THRISSUR TALUK,THRISSUR DISTRICT.

2. UNNIKRISHNAN, DO. RESIDING AT
   THRIKKUR VILLAGE,THRIKKUR DESOM, DO. DO.

3. DR.RAVINDRANATH, DO. RESIDING AT GOPI KRISHNA,
   PUNKUNNAM, DO. DO.

4. VIDYASAGAR, DO. RESIDING AT GREEN COTTAGE,
   THRIKKUMARAKUDAM ROAD,AYYANTHOLE VILLAGE, DO. DO.

5. KAMALAM ,W/O.LATE ALLATH GOPINATHAN, RESIDING AT
   VALLATH HOUSE, TRIPRAYAR, NATTIKA VILAGE
   CHAVAKKAD TALUK, THRISSUR DISTRICT.

6. VASANTH KUMAR,S/O.LATE ALLATH GOPINATHAN
   RESIDING AT VALLATH HOUSE, DO. DO.

7. SREEKUMAR,S/O.LATE ALLATH GOPINATHAN, -DO-

8. JYOTHI LAKSHMI, D/O. DO. DO.

9. AMBUJAKSHI,D/O.ALLATH KARTHYAYAHI AMMA,
   RESIDING AT SAI KRISHNA NIVAS,PUNKUNNAM,
   THRISSUR TALUK,THRISSUR DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 12878 of 2007 G

JUDGMENT

Advocate Sri.K.P.Sreekumar enters appearance for the third respondent/third plaintiff in O.S.No. 552/00 on the file of the I Additional Sub Court, Thrissur. Grant of any interim order in this writ petition is vehemently opposed by him. Counsel for the petitioner submits that inasmuch as additional issues 6 and 7, regarding partial partition and non-joinder of necessary parties, are raised, it is incumbent upon the court to afford opportunity to cure the defects covered by additional issues 6 and 7 and that, therefore, further trial of the suit is to be stayed.

2. It is submitted that the suit, which was in the list, is being continued in the list; that evidence is already over and that arguments on the side of the plaintiffs are already over. Counsel for the third respondent submits that the

plaintiffs did not want any opportunity to cure either the defect of partial partition or the alleged defect of non-joinder of necessary parties and that they are prepared to take the risk, if at all the suit is found to be bad on account of partial partition or for non-joinder of necessary parties. It is further submitted that the plaintiffs did not claim any right over the item of property having an extent of seventy cents, non-inclusion of which is contended by the petitioner, to render the suit bad for partial partition and for non-joinder of necessary parties and that when the said property is not the subject matter of partition, the alleged defect of non-joinder of necessary parties also is not there and further that the plaintiffs are prepared to take the risk, if, for any reason, it is found otherwise by the court below. It is also submitted that the two additional issues were raised while trial of the suit in the list was being proceeded with, with a

rider that opportunity shall not be allowed to be availed of by either side by way of additional pleadings or evidence for the reason that in the event of seventy cents, on which, the plaintiffs did not claim any right, is not there as the subject matter of partition, the alleged defect of non-joinder of necessary parties also will not be there.

3. Counsel for the petitioner replies that the contention of non-joinder of necessary parties also is raised for the reason that she has a case that the scheduled property, partition of which is claimed, is thavazhy property and that, therefore, all the members of the thavazhy are necessary parties to the suit. All the same, he does not dispute the fact that title over the property is claimed by the sharers on the basis of a will executed by their mother in the year 1996, which has come into existence on 22.2.1998, when the testator passed away. Then, there is no question

of the property being thavazhi property. Thus, I see no merit at all in this writ petition.

In the result, I dismiss this writ petition.

12th April, 2007 (K.P.Balachandran, Judge)

tkv